The City of New York

POLICE DEPARTMENT

April 24, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Tapia
Tax Registry No. 939554
Firearms and Tactics Section
Disciplinary Case No. 2011-5714

The above named member of the Department appeared before the Court on February 26, 2014, charged with the following:

1. Said Police Officer Michael Tapia, while assigned to the 48th Precinct, on or about and between March 21, 2010 and September 8, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer on several occasions did request of another member of service assistance with the prevention of the processing and adjudication of several summonses issued to several individuals. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office. Respondent was represented by Stuart London, Esq., Worth, Longworth & London LLP.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Bryan Brooks as a witness.

Sergeant Bryan Brooks

Brooks previously was assigned to the Internal Affairs Bureau (IAB). He worked on the collaborative telephone wiretap investigation conducted by the Bronx District Attorney's Office and the New York City Police Department (NYPD) into ticket-fixing by members of the Department. Brooks was responsible for interviewing more than 350 officers over the course of the investigation. The investigation covered requests to "take care" of a summons that went through a Department union delegate. There were several different ways to "take care" of a summons, including not turning a summons in, preparing a summons improperly, or not testifying in a completely truthful manner in court, in order to get the summons dismissed.

Respondent was assigned to the 48 Precinct. The wiretap under which Respondent was investigated was placed on the phone of Police Officer Christopher Scott, a Patrolmen's Benevolent Association delegate for the 48 Precinct currently under indictment.

Brooks reviewed audio recordings and transcripts of the wiretap covering conversations between Respondent and Scott (see Department Exhibit [DX] 1, recordings; DX 1a, transcripts). Brooks also interviewed Respondent. Brooks asked Respondent if in the last 18 months he had either taken care of a summons or requested that a summons be taken care of. Respondent admitted asking for a parking summons he received to be taken care of. Respondent did so by going through Scott and requesting assistance. He could not give a specific date of when he did so, but his maneuver resulted in him not paying a fine for the summons.

Respondent also admitted to Brooks that on March 21, 2010, he made a request to take care of a summons on behalf of a friend's mother. The friend was named Person A and the summons was issued to her mother for having an unleashed dog. When Respondent tried to take care of this summons by speaking to Scott, he said that it was for a family member so that it would be taken care of more quickly.

On cross examination, Brooks admitted that Respondent told his friend, Person A just to pay the summons because there was nothing he could do about it.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a nine-year member of the Department, currently was assigned to the Firearms and Tactics Section. He was on restricted duty following a line-of-duty injury. Prior to that, he was assigned to patrol in the 48 Precinct.

Respondent testified that he received a parking ticket for his personal vehicle. This led him to contact his delegate, Scott. The result of that interaction was that the summons was "corrected" and Respondent did not have to pay the fine.

Respondent stated that sometime between March 21, 2010, and September 8, 2011, a family friend of Respondent received a summons for having a dog off its leash. Respondent contacted Scott, who told Respondent that nothing could be done and the friend just would have to pay the summons. Respondent relayed this information to the friend.

On cross examination, Respondent testified that when he initially received the parking summons, he first went to the local precinct to see if they could take care of it. Respondent was informed that he would have to speak to his delegate, so he called Scott. Scott took care of the ticket for Respondent and he did not have to pay it.

Respondent testified that he grew up with Person A

Upon questioning by the Court, Respondent said that Person A told him a police officer issued the summons to her mother.

On re-direct examination, Respondent noted that he did not see the leash summons. It was possible that it was issued by an agency other than the NYPD.

On re-cross examination, Respondent clarified that when he asked Scott to take care of the ticket for Person A's mother, he thought it was issued by the NYPD. Scott was pretty abrupt with Respondent over the phone about Respondent's request to take care of the ticket.

FINDINGS AND ANALYSIS

This case involves an allegation of ticket-fixing. The specification alleges that Respondent "on several occasions did request of another member of service assistance with the prevention of the processing and adjudication of several summonses issued to several individuals." The evidence at trial revealed that there were two summonses at issue. Both were revealed as the result of a wiretap in the criminal ticket-fixing case, for which Police Officer Christopher Scott and others now stand indicted. Respondent was assigned to the 48 Precinct and Scott was his union delegate.

In one of the summonses at issue, Respondent was recorded on the wiretap asking Scott for assistance with a summons. Scott told Respondent that his phone was having problems and

he would call back. At a subsequent official Department interview and at trial, Respondent explained that the summons was for an unleashed dog. It was issued to the mother of Respondent's friend. Respondent admitted at trial that he asked Scott for assistance in preventing the adjudication of the summons. Specifically, he admitted that he told Scott the summonsee was a family member, rather than a friend, so the matter would get taken care of more quickly.

Scott called Respondent back in an unrecorded conversation. Scott told him that he was unable to help. There was conjecture at trial that Scott refused to help, and in fact feigned phone trouble in the previous call, because he suspected that his phone was being tapped. It also was asserted that the summons perhaps was issued by a non-NYPD agency, like the Parks Enforcement Patrol. This would have meant that Scott could not use the inter-delegate system to reach out to the issuing officer and have him take care of the summons. IAB never determined the name of the friend's mother, so investigators did not actually know whether the summons was adjudicated.

In any event, Respondent did not contest the Department's assertion that he contacted another member of the service for assistance in having a summons not adjudicated. Whether or not it was adjudicated is not relevant to the specification. He thus is found Guilty of this part of the specification.

The other summons involved a parking ticket issued to Respondent's personal vehicle within New York City. He walked into the local station house and asked that the summons be voided. He was told that he had to go through his delegate. This matter was revealed when Respondent mentioned it at his official interview. One standard question to officers in such interviews is whether they tried to have any summonses taken of in a certain time period,

referring to the statute of limitations. At trial, Respondent admitted that he asked another member of the service for assistance in preventing the adjudication of the parking ticket.

Because Respondent admitted that he asked other members for assistance in preventing the adjudication of the two summonses in question, he is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 11, 2005. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of requesting the assistance of another Department member to prevent the processing and adjudication of two summonses issued to two separate individuals. One was a parking ticket issued to Respondent's personal vehicle. The other was issued to the mother of a friend of Respondent for having a dog without a leash.

Respondent argued that the penalty should be something less than the established standard in these cases: the forfeiture of 25 vacation days, suspension for 5 days, and placement on one year of dismissal probation. See, e.g., *Case No. 2011-6110* (Nov. 12, 2013). He suggested that the two requests here were de minimis. One was a parking summons issued to his own personal vehicle, and the other was for an unleashed dog and might have been issued by an outside agency. It was established that Respondent did not have to pay the parking ticket, apparently because Scott took care of it. The status of the dog summons was not determined because IAB did not know or care to find out the name of the summonsee.

There is historical backing for at least Respondent's attempts to change the standard. In *Case No. 2011-5715* (May 3, 2013), a hearing which involved two summonses for parking violations, Deputy Commissioner Martin G. Karopkin recommended a penalty of 25 vacation days and one year of probation, without the period of suspension. The trial commissioner noted that parking infractions did not involve the same kind of risk to public safety as did moving violations (see *5715* at p. 6). In his disapproval memorandum adding the 5 suspension days, however, the Police Commissioner starkly noted that the officer's misconduct "involved the prevention of the processing and adjudication of summonses and warrants a greater penalty."

Also, in *Case No. 2011-5124* (Jan. 24, 2012), the officer asked the delegate to prevent the adjudication of two summonses, but the summonses apparently were adjudicated anyway. In plea proceedings, also before Karopkin, the Advocate, finding the officer's misconduct to be "on the lower level" as far as the Bronx ticket-fixing cases had gone, made an offer of 25 vacation days and 5 days to be served on suspension (see plea tr., p. 4, Oct. 18, 2011). The officer accepted that offer and pleaded guilty. The Police Commissioner, however, rejected the disposition and directed that the penalty include the probationary year.

This does not mean that this Court cannot depart from precedent. It just means that such a move demands justifying circumstances. In the instant case, Respondent has not presented justification to depart from the standard. There was no evidence or even suggestion that there was anything about the summonses that warranted discretion. Respondent was not calling upon an officer on the scene to consider the circumstances. Rather, he was calling upon someone to do a "favor" regardless of the circumstances. For example, in the unleashed dog case, the mother of Respondent's friend might have had a toy poodle in her pocketbook. Or she might

have had a menacing pit bull. The facts did not matter to Respondent; instead, doing a favor was what mattered. See *Case No. 2011-6397*, p. 7 (Dec. 17, 2012).

Further, Respondent only damaged his case when he testified that he went into the local precinct to have his parking ticket "corrected." If there was something about the summons that legitimately needed "correction," the place to do that was in the traffic violations court. The issuance of a summons to a police officer, his relative, friend, friend's relative, or any other "connected" person is not a "mistake" that needs "correcting." It is a valid legal process and must be responded to as such by members of this Department.

In sum, Respondent's argument for a lesser penalty is rejected, as he presented no justification for such. The Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent be suspended for 5 days and that he forfeit 25 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

JUL 18 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL TAPIA
TAX REGISTRY NO. 939554
DISCIPLINARY CASE NO. 2011-5714

Respondent's last three annual evaluations are as follows: he received an overall rating of 3.5 "Highly Competent/Competent" in 2013, and 3.0 "Competent" in 2012 and 2011. He has one medal for Excellent Police Duty. [redacted] He has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials